



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

JRE  
Docket No: 1144-99  
16 November 1999



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 29 September 1967, the Physical Evaluation Board determined that you were unfit for duty because of carotid sinus syndrome, which it rated at 80% by analogy to arteriosclerotic heart disease which precluded more than sedentary employment. On 13 December 1967, the Physical Review Council (PRC) determined that your condition was ratable at 30% by analogy to Meniere's syndrome and involvement of the aortic branches. Notwithstanding the latter finding, your condition was rated at 60% when you were released from active duty on 23 January 1968 and transferred to the Temporary Disability Retired List (TDRL). You were permanently retired from the Marine Corps effective 1 November 1969, with a rating of 60 percent. The Veterans Administration (VA) rated your carotid sinus syndrome at 30% from 24 January 1968 to 1 June 1973, when the rating was reduced to 10%. The reduction was based solely on the VA's determination that your condition had improved. The VA also awarded ratings of 0% for a shrapnel wound and anxiety reaction effective 24 January 1968. The rating for the latter condition was increased to 30% effective 18 December 1978.

The Board was not persuaded that your carotid sinus syndrome was ratable in excess of 60% when you were transferred to the TDRL in 1968, or when you were permanently retired in 1969, as the condition was productive of no more than moderate disability. The PRC reduced the 80% rating proposed by the PEB based on the PRC's determination that your condition was not severe and did not meet the rating criteria for an 80% rating. The reduction was not based on an agreement between you and the Department of the Navy, and it had nothing to do with your potential receipt of disability compensation from the VA. You did not elect the 60% rating; you were assigned it.

The Board concluded that the available evidence is insufficient to demonstrate that you suffered from a ratable anxiety disorder prior to your permanent retirement. It noted that as ratings determination made by the military departments are fixed as of the date of an individual's separation or permanent retirement, the increase in severity of your anxiety disorder which occurred following your retirement was a matter within the purview of the VA rather than the Department of the Navy. In this regard, the Board noted that unlike the military departments, the VA may adjust disability ratings throughout a veteran's lifetime as the severity of rated conditions change.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It appears that you are confused as to what actually occurred in your case. The available records suggest that you received the full amount of your military retired pay entitlement, which in your case was 60% of your base pay, as well as VA disability compensation. As you were advised by the VA on 25 April 1973, this is considered to be a duplication of benefits. Law and regulations in effect at the time of your transfer to the TDRL prohibited such duplication. It appears that when the duplication was discovered, you were required to repay the overpayment. Your receipt of duplicate benefits for a number of years apparently resulted from an oversight by officials of the VA, and was not related to your military disability rating. As indicated in enclosure 9 to your application, VA compensation is not taxable, and a veteran may elect it in lieu of retired pay where the VA compensation is greater than the retired pay, or in those cases where the retired pay is taxable because the retirement was based on age or length of service. Neither of those circumstances were applicable to your case, and you would not have benefitted by waiving any or all of your retired pay in favor of receiving VA compensation.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director